

**IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF OKLAHOMA**

MIKEL RAY HENDERSON,)	
)	
Petitioner,)	
)	
vs.)	Case No. CIV-10-283-JHP
)	
DAVID L. PARKER, Warden,)	
)	
Respondent.)	

ORDER

This was a § 2254 proceeding filed by a *pro se* Oklahoma inmate. On July 18, 2011, this Court denied Petitioner’s requested writ of habeas corpus. Dkt. # 25. Judgment was entered the same day. Dkt. # 26. At that time, the Court failed to “issue or deny a certificate of appealability” pursuant to Rule 11(a) of the Rules Governing Section 2254 Cases.

Title 28 U.S.C. § 2253(c)(2) provides that a certificate of appealability shall issue “only if the applicant has made a substantial showing of the denial of a constitutional right.” Further, subsection (c)(3) provides that the certificate of appealability “shall indicate which specific issue or issues satisfy the showing required by paragraph (2).” In *Lennox v. Evans*, 87 F.3d 431, 434 (10th Cir. 1996), the Court held the standard adopted in § 2253(c)(2) is merely a codification of the standard adopted in *Barefoot v. Estelle*, 463 U.S. 880, 103 S.Ct. 3383, 77 L.Ed.2d 1090 (1983), governing issuance of a certificate of probable cause. In *Barefoot*, the Court set forth the standard for issuance of a certificate of probable cause as follows:

“In requiring a ‘question of some substance’, or a ‘substantial showing of the denial of [a] federal right’, obviously the petitioner need not show that he should prevail on the merits. He has already failed in that endeavor. Rather, he must demonstrate that the issues are debatable among jurists of reason; that a court could resolve the issues [in a different manner]; or that the questions are ‘adequate to deserve encouragement to proceed further.’” *Gordon v. Willis*, 516 F.Supp. 911, 913 (ND Ga. 1980) (quoting *United States ex rel. Jones v. Richmond*, 245 F.2d 234 (CA2), *cert. denied*, 355 U.S. 846, 78 S.Ct. 71, 2 L.Ed.2d 56 (1957)).

Barefoot, supra at U.S. 893, S.Ct. 3395, footnote 4.

After a careful review of the record, this Court finds Petitioner has failed to make a sufficient showing of a violation of any constitutional rights or that the issues would be debatable among jurists of reason. Accordingly, this Court declines to issue a certificate of appealability.

It is so ordered on this 24th day of August, 2011.


James H. Payne
United States District Judge
Eastern District of Oklahoma